

II. REMARKS

Formal Matters

Claims 21, 24-28, and 31-35 are pending after entry of the amendments set forth herein.

Claims 21-30 were examined and were rejected.

Claims 22, 23, 29, and 30 are canceled without prejudice to renewal, without intent to acquiesce to any rejection, and without intent to surrender any subject matter encompassed by the canceled claims. Applicants expressly reserve the right to pursue any canceled subject matter in one or more continuation and/or divisional applications.

Claims 21, 24, 26, and 28 are amended. The amendments to the claims were made solely in the interest of expediting prosecution, and are not to be construed as an acquiescence to any objection or rejection of any claim. Support for the amendments to claims 21, 24, 26, and 28 is found in the claims as originally filed, and throughout the specification, in particular at the following exemplary locations: page 18, lines 13-14; and page 8, lines 15-22. Accordingly, no new matter is added by these amendments.

New claims 31-35 are added. Support for new claims 31-35 is found in the claims as originally filed (e.g., claim 3 as originally filed) and throughout the specification, in particular at the following exemplary locations: page 18, lines 13-14; page 8, lines 15-22; page 21, line 18 to page 22, line 1; Figures 3 and 4; and Example 1. Accordingly, no new matter is added by new claims 31-33.

Applicants respectfully request reconsideration of the application in view of the remarks made herein.

Obviousness-type double patenting

Claims 21-27 were rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1-18 of U.S. Patent No. 6,120,799.

Applicants enclose herewith a terminal disclaimer, disclaiming patent term beyond the expiration date of U.S. Patent No. 6,120,799. Thus, this rejection of claims 21-27 may be withdrawn.

Claims 21-30 were rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 12-13 of U.S. Patent No. 5,837,283.

Applicants enclose herewith a terminal disclaimer, disclaiming patent term beyond the expiration date of U.S. Patent No. 5,837,283. Thus, this rejection of claims 21-30 may be withdrawn.

Rejections under 35 U.S.C. §102

Claims 21-31 were rejected under 35 U.S.C. §102(a) as allegedly anticipated by Wasan et al. ((1996) *J. Pharmaceutical Sciences* 85:427-433; “Wasan”). Claims 27-31 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Felgner et al. ((1987) *Proc. Natl. Acad. Sci. USA* 84:7413-7417; “Felgner”). Claims 21-31 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by DePrince (U.S. Patent No. 5,705,693).

Claims 22, 23, 29, and 30 are canceled without prejudice to renewal, thereby rendering the rejections of these claims moot.

Comments regarding the claims

Claims 21, 26, and 28 are amended to recite that the cationic liposome **has a zeta potential greater than 0 mV** and wherein said cationic liposome has greater affinity for angiogenic endothelial cells compared to corresponding normal endothelial cells. None of the cited art discloses or suggests a cationic liposome comprising a cationic lipid and a detectable label, wherein the cationic liposome has a zeta potential greater than 0 mV, and wherein the cationic liposome has greater affinity for angiogenic endothelial cells compared to corresponding normal endothelial cells. Accordingly, none of the cited art can anticipate the instant invention as claimed.

Rejection under 35 U.S.C. §102(a) over Wasan

The Office Action stated that Wasan discloses cationic liposomes containing a detectable label; and stated that the liposomes have sizes of 125-150 nm. Applicants respectfully traverse the rejection.

As noted above, Wasan neither discloses nor suggests a composition comprising a cationic liposome and a detectable label, wherein the cationic liposome has a zeta potential greater than 0 mV, and wherein the cationic liposome has greater affinity for angiogenic endothelial cells compared to corresponding normal endothelial cells. Accordingly, Wasan cannot anticipate the instant invention as claimed.

Rejection under 35 U.S.C. §102(b) over Felgner

The Office Action stated that Felgner discloses fluorescent labeled cationic lipid-DNA complexes. Applicants respectfully traverse the rejection.

As noted above, Felgner neither discloses nor suggests a composition comprising a cationic liposome and a detectable label, wherein the cationic liposome has a zeta potential greater than 0 mV, and wherein the cationic liposome has greater affinity for angiogenic endothelial cells compared to corresponding normal endothelial cells. Accordingly, Felgner cannot anticipate the instant invention as claimed.

Rejection under 35 U.S.C. §102(e) over DePrince

The Office Action stated that DePrince discloses fluorescent labeled cationic lipid-nucleic acid complexes. Applicants respectfully traverse the rejection.

As noted above, DePrince neither discloses nor suggests a composition comprising a cationic liposome and a detectable label, wherein the cationic liposome has a zeta potential greater than 0 mV, and wherein the cationic liposome has greater affinity for angiogenic endothelial cells compared to corresponding normal endothelial cells. Accordingly, DePrince cannot anticipate the instant invention as claimed.

Conclusion as to the rejections under 35 U.S.C. §102

Applicants submit that the rejections of claims 21-31 under 35 U.S.C. §102 have been adequately addressed in view of the remarks set forth above. The Examiner is thus respectfully requested to withdraw the rejection.

Rejection under 35 U.S.C. §103

Claims 27-29 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Felgner or Wasan. Claims 27-29 were rejected under 35 U.S.C. §103 as allegedly unpatentable over Folkman (U.S. Patent No. 5,837,682) in view of Felgner or DePrince or Wasan; or over Felgner or DePrince or Wasan in view of Folkman.

Claim 29 is canceled without prejudice to renewal, thereby rendering the rejections of this claim moot.

Claims 27-29 over Felgner or Wasan

The Office Action stated: 1) Felgner and Wasan disclose fluorescent labeled cationic lipid-DNA complexes; 2) the fluorescent labeling is for the purpose of identification of the cells which were transfected; and 3) it is within the skill of the art to omit the active agent from Felgner and Wasan. Applicants respectfully traverse the rejection.

As discussed above, none of the cited art discloses or suggests a cationic liposome comprising a cationic lipid and a detectable label, wherein the cationic liposome has a zeta potential greater than 0 mV, and wherein the cationic liposome has greater affinity for angiogenic endothelial cells compared to corresponding normal endothelial cells. Furthermore, none of the cited art discloses a cationic liposome comprising a cationic lipid and a detectable label that is suitable for *in vivo* use. Accordingly, Felgner, alone or in combination with Wasan, cannot render claims 27 and 28 obvious.

Claims 27-29 over Folkman in view of Felgner or DePrince or Wasan

The Office Action stated that: 1) Folkman discloses lipofectin-DNA complexes, where the DNA sequence encodes angiostatin; 2) Felgner, DePrince, and Wasan disclose fluorescent labeled cationic lipid-DNA complexes for identification of transfected cells. The Office Action concluded that one of ordinary skill in the art would be motivated to label the complexes of Folkman. Applicants respectfully traverse the rejection.

As discussed above, none of the cited art discloses or suggests a cationic liposome comprising a cationic lipid and a detectable label, wherein the cationic liposome has a zeta potential greater than 0 mV, and wherein the cationic liposome has greater affinity for angiogenic endothelial cells compared to corresponding normal endothelial cells. Furthermore, none of the cited art discloses a cationic liposome comprising a cationic lipid and a detectable label that is suitable for *in vivo* use. Accordingly, Folkman, alone or in combination with Felgner, DePrince, or Wasan, cannot render claims 27 and 28 obvious.

Conclusion as to the rejections under 35 U.S.C. §103

Applicants submit that the rejection of claims 27-29 under 35 U.S.C. §103 has been adequately addressed in view of the remarks set forth above. The Examiner is thus respectfully requested to withdraw the rejection.

III. CONCLUSION

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number UCSF077CON2.

Respectfully submitted,
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